

Decision 03-07-035 July 10, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Monitoring
Performance of Operations Support Systems.

Rulemaking 97-10-016
(Filed October 9, 1997)

Order Instituting Investigation on the
Commission's On Motion into Monitoring
Performance of Operations Support Systems.

Investigation 97-10-017
(Filed October 9, 1997)

**DECISION APPROVING JOINT PARTIAL
SETTLEMENT AGREEMENT AMENDMENTS**

TABLE OF CONTENTS

Title	Page
DECISION APPROVING JOINT PARTIAL SETTLEMENT AGREEMENT	
AMENDMENTS.....	2
A. Summary	2
B. Background	2
C. The Current Settlement	6
1. Parity Standards Changed to Benchmark Standards.....	8
2. Change Benchmark Standard Percentage and Times, or Change Benchmark Type	9
3. Add Standards Where Previously not Established	9
4. Modify Standards for Upgraded Systems	10
5. Aggregate or Disaggregate Sub-Measures	10
6. New Exclusions	10
7. New Diagnostic Measures	11
8. Clarification of Business Rules, Calculations, or Descriptions.....	11
9. Clarifying or Informational Notes	13
10. New Measures	13
11. Title Changes for Changed PMs	14
12. Change Retail Analog.....	14
13. Delete Measure	14
D. Discussion	14
E. Comments on Draft Decision	18
F. Assignment of Proceeding	18
Findings of Fact	18
Conclusions of Law	20
ORDER.....	22
Appendix A: California OSS OII Performance Measurements: Joint Partial Settlement Agreement, With Revisions Highlighted	
Appendix B: List of 2002 Review Issues	
Appendix C: SBC Implementation Schedule	
Appendix D: Verizon Implementation Schedule	

DECISION APPROVING JOINT PARTIAL SETTLEMENT AGREEMENT AMENDMENTS

A. Summary

By this decision we adopt amendments to the Joint Partial Settlement Agreement (JPSA), which is comprised of operations and support systems (OSS) performance measures for Pacific Bell Telephone Company (SBC California or SBC, U 1001 C), and Verizon California Inc. (Verizon, U 1002 C). These measures have been established to ensure that SBC's and Verizon's OSS services to the competitive local exchanges carriers (CLECs) do not present barriers to the CLECs' ability to offer consumers local phone service.¹

The original JPSA was adopted in 1999 and has been amended periodically to incorporate experience with the measures and to adapt to market changes. The amendments we adopt today consist of the modifications to which parties agreed in their 2002 review of the JPSA.

B. Background

The Telecommunications Act of 1996 and the Federal Communications Commission's (FCC) implementing rules require SBC and Verizon to provide competing CLECs with nondiscriminatory access to OSS. In the August 1996 *Local Competition First Report and Order*, the FCC commented, generally, that Incumbent Local Exchange Carriers (ILECs) must provide CLECs with access to the preordering, ordering, provisioning, billing, repair, and maintenance OSS

¹ While the Commission has expressed its intentions to have a performance incentive plan (PIP) for both SBC and Verizon where billing credits are issued to the CLECs and the ratepayers for OSS service that fails performance standards, only a plan for SBC has been implemented at this time. See Decision (D.) 02-03-023, *Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company (Incentives Plan Opinion)*, March 6, 2002.

sub-functions such that CLECs are able to perform these OSS functions in “substantially the same time and manner” as the ILECs can for themselves.² In August 1997, the FCC’s *Ameritech Opinion* clarified that for those OSS sub-functions with retail analogs, an ILEC “must provide access to competing carriers that is equal to the level of access that the [ILEC] provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness.”³ The FCC further clarified in the *Ameritech Opinion* that for those OSS functions with no retail analog, an ILEC must offer access sufficient to allow an efficient competitor “a meaningful opportunity to compete.”⁴

To address these local competition OSS issues in California, on October 9, 1997, we issued an order instituting a rulemaking proceeding and investigation (hereinafter, the OSS OII) to accomplish several goals, including (1) the determination of reasonable standards of OSS performance for SBC and Verizon, (2) the development of a mechanism that would allow us to monitor

² See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15763-64 [¶518] (1996) (“*Local Competition First Report and Order*”), *aff’d in part and vacated in part sub nom. Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *modified on reh’g*, No. 96-3321 (Oct. 14, 1997) (*Rehearing Order*), *petition for cert. granted*, 118 S. Ct. 879 (1998).

³ See, *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20618-19 [¶139] (1997) (*Ameritech Michigan Order*), *writ of mandamus issued sub nom. Iowa Utils. Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998). (“*Ameritech Opinion*”); see also, *In the Matter of Application of Bellsouth Corporation, et al., for Provision of In-Region, InterLATA services in Louisiana* (“*BellSouth (Louisiana II) Opinion*”) CC Docket No. 98-121, FCC 98-271 (10-13-98), paragraph 87 (*citing, Ameritech Opinion* at 12 FCC Rcd 20618-19).

⁴ See, *Ameritech Opinion* at 12 FCC Rcd at 20619 [¶141]; see also, *BellSouth (Louisiana II) Opinion* at ¶87 (*citing Ameritech Opinion* at 12 FCC Rcd at 20619).

improvements in OSS performance, and (3) the assessment of the best and fastest method of ensuring compliance if standards are not met or improvement is not shown.⁵ In the course of the OSS OII, various parties entered into lengthy and detailed negotiations to establish a set of performance measures consistent with our stated goals.⁶ The parties filed a Joint Motion for approval of the JPSA on January 7, 1999, and filed motions on the remaining open issues on January 8, 1999. We issued a decision approving the JPSA and resolving most of the remaining open issues on August 5, 1999. (D.99-08-020, *Opinion*, August 5, 1999.)

In the original 1999 JPSA, the parties recognized that they were unlikely to foresee how well all the performance measurements would function in pursuit of the underlying goals. They recognized that time and experience was likely to reveal needed improvements, and that periodic reviews should be performed. (*Amended Joint Partial Settlement Agreement Pursuant to Administrative Law Judge's Ruling of April 9, 1999* ("1999 JPSA"), filed May 3, 1999, Attach. A at 66.) The parties agreed to periodic reviews commencing in February 2000. The parties engaged in lengthy negotiations during the February 2000 review and submitted agreed-upon modifications to the Commission on July 18, 2000 ("2000 JPSA").

⁵ *Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems* (R.97-10-016), and *Order Instituting Investigation on the Commission's Own Motion into Monitoring Performance of Operations Support Systems* (I.97-10-017), October 9, 1997.

⁶ A full history of the parties' negotiations and the basis for the development of the measures and standards contained in the JPSA is set forth in the Settling Parties' Joint Motion filed in this docket on January 7, 1999.

We subsequently adopted these agreed-upon modifications on May 24, 2001.⁷ (D.01-05-087, *Opinion*, May 24, 2001.)

The parties commenced the next periodic review in June 2002. On June 20, 2002, all parties to this proceeding were notified in writing pursuant to Rule 51.1(b) of the Commission's Rules of Practice and Procedure that settlement discussions would be held for the purpose of discussing issues relating to OSS performance measurements.⁸ The Administrative Law Judge (ALJ) held a pre-hearing conference in October 2002 to evaluate the status of the parties' discussions. In connection with that pre-hearing conference, the parties agreed to file a joint motion regarding the agreed-upon changes on January 31, 2003, and to file separate motions on February 7, 2003, for changes to which they did not agree.

The parties filed the consensual changes as agreed on January 31, 2003. SBC, Verizon, AT&T Communications of California, Inc. (AT&T), WorldCom, Inc. (WorldCom), Covad Communications Co. (Covad), XO California, Inc. (XO), and Time Warner Telecom of California (TWTC) (collectively, the Settling

⁷ Two subsequent decisions in 2002 also amended the JPSA: D.02-06-046 and D.02-08-050. These decisions addressed specific problems of a time-sensitive nature by adopting agreements between the parties. D.02-06-046 added new service types, deleted an unnecessary service type, and modified one performance measurement to account for industry-wide performance constraints that were beyond the control of Pacific. D.02-08-050 made previously unworkable parity standards for a few Digital Subscriber Line (DSL) sub-measures workable by converting them either to absolute "benchmarks" or to different parity comparisons.

⁸ E-mail from Ed Kolto, SBC Pacific Bell Telephone Company, forwarded by Hugh Osborne, SBC Pacific Bell Telephone Company, to the OSS OII service list, June 20, 2002, Subject: OSS OII Rule 51.1 Notice re Formal JPSA Review.

Parties)⁹ filed a joint motion asking the Commission to approve these amendments to the JPSA.¹⁰

C. The Current Settlement

The appended JPSA represents an agreement by the Settling Parties regarding their proposed changes to the existing JPSA, and does not include any proposals from the February 7, 2003 filing containing the disagreements. The purpose of the 2002 review was to evaluate the effectiveness of the performance measures adopted in D.99-08-020 and modified in D.01-05-087. In that regard, many aspects of the previously adopted JPSA were reviewed, and where the Settling Parties reached agreement to modify the JPSA, those modifications have been incorporated in the revised JPSA attached to this motion. When an agreement was not reached on a requested change, an “Open” issue was designated and parties separately requested the change they desired in their February 7, 2003 motions.

Appendix A presents a copy of the most recent JPSA, with the revisions we adopt today identified by highlighted text.¹¹ The Settling Parties agree that these

⁹ SBC and Verizon are the ILECs, and AT&T, WorldCom, Covad, XO, and TWTC are the CLECs, which joined in filing the settlement motion.

¹⁰ SBC, Verizon, AT&T, WorldCom, Covad, XO, and TWTC, *Joint Motion for Adoption of Amendments to Joint Partial Settlement Agreement Pursuant to Article 13.5 of the Commission's Rules of Practice and Procedure (Joint Motion)*, filed January 31, 2003.

¹¹ Appendix A consists of the revised JPSA filed by the parties on January 31, 2003, updated with the subsequent errata and corrections. (*Joint Motion*, Attach. A; SBC California, *Motion To File Errata To Joint Motion For Adoption Of Amendments To Joint Partial Settlement Agreement Pursuant To Article 13.5 Of The Commission's Rules Of Practice And Procedure*, filed February 7, 2003; Verizon, *Motion of Verizon California Inc. (U1002) for the Commission to Accept Its Reply Comments Regarding the 2002 Performance Measures Review*, filed February 21, 2003; Letter from Marlin Ard, Verizon to ALJ Jacqueline A.

Footnote continued on next page

documents embody “the best efforts of the CLECs, SBC, and Verizon to agree on modifications to the performance measurements approved by the Commission in D.99-08-020 and subsequently in D.01-05-087.” (*Joint Motion* at 3.) In addition to adopting major revisions to our OSS performance measurements and standards, we also adopt timetables for implementing the modifications and for the next review.¹² The appended JPSA resolves most of the issues identified by the Settling Parties during the current 2002 review.¹³ The Settling Parties assert that “the attached JPSA is reasonable in light of the whole record of competition in the California local exchange market, is consistent with the stated objectives of

Reed, with cc to Service List, dated April 22, 2003.) A copy of the revised JPSA as presented here in Appendix A was served on the parties electronically on February 21, 2003. (E-mail from Hugh Osborne, SBC California-Legal, Subject: *OSSOII: SBC/CA's Resp to Motion On Unresolved Perf Meas and Rel Open Issues*, dated February 21, 2003, Attachment B.). Appendix A is a “redlined” version reflecting the changes made today, with strikeover and underlining graphics documenting deletions and additions, respectively. Appendix B represents a list of issues that were raised during the negotiations and is the working document used by the parties to track closed issues. The issues listed as “closed” in Appendix B are the issues the parties resolved in the January 31, 2003 motion and are adopted today. The issues listed as “open” are the issues remaining that are unresolved and addressed in the separate February 7, 2003 motions, to be considered by the Commission separately from this decision.

¹² Consistent with the negotiations and the process followed in prior JPSAs, SBC and Verizon have filed separate implementation schedules, included here as Appendices C and D, respectively. *SBC California's Notice of Implementation Schedule for Amendments Submitted to the Joint Partial Settlement Agreement*, filed March 3, 2003; *Verizon California Inc. (U 1002 C) OSS Implementation Schedule: Revised*, filed March 26, 2003.

¹³ The outstanding, unresolved issues are identified as “Open” in Appendix B. The parties filed motions for the Commission’s resolution of the remaining open issues on February 7, 2003, and filed replies to those motions on February 21, 2003. These open issues will be addressed in a separate decision.

the Commission in this proceeding, and meets the Commission's public interest test for the approval of settlements."¹⁴

In resolving a total of 196 identified issues and proposals, the parties agreed to several hundred individual amendments. These amendments fall into 13 basic categories, which we discuss below.¹⁵

1. Parity Standards Changed to Benchmark Standards

A few parity standards were changed to benchmark standards.¹⁶ For example, for Performance Measure (PM) 1, wholesale average pre-order time for a mechanized loop qualification query has been compared to the retail analog average time, but will be changed to a wholesale benchmark standard of 95% of these queries completed within 15 seconds (design) or 45 seconds (actual). (See App. B, Issue 1, and App. A at 13.) In another example, the wholesale NXX code opening trouble report rate (PM 19) has been compared to the respective retail

¹⁴ By seeking approval of the JPSA, the Settling Parties state that they "make no representation that the JPSA constitutes a definitive or a conclusive standard for SBC California's or Verizon's compliance with the Telecommunications Act of 1996. In addition, AT&T and XO continue to assert that parity comparisons, and not benchmarks, are the appropriate performance standards under applicable law. Likewise, by agreeing to the performance measures contained in the JPSA, SBC California and Verizon do not make any commitment or admission regarding the propriety or reasonableness of establishing performance remedies." *Joint Motion* at 2.

¹⁵ These categorical summaries do not reflect any party's position beyond the statements in the motion or in the comments to the draft of this decision. Here, we only summarize and illustrate the kinds of changes to which the parties agreed and that we adopt today.

¹⁶ The benchmarks standards were developed consistent with the standards initially formulated in D.99-08-020.

rate, but will be converted to a benchmark standard trouble report rate of 0.1% or less. (See App. B, Issue 132, and App. A at 90 – 91.¹⁷)

2. Change Benchmark Standard Percentage and Times, or Change Benchmark Type

For example, for some PM 1 sub-measures, a benchmark of 98% of queries completed within 24 hours was changed to 95% within 8 hours. (See App. B, Issue 3, and App. A at 13.)

In an example of a benchmark-type change, where SBC previously needed to complete customer address verifications within an average of 4.5 seconds or less (an averaged-based benchmark), it now must complete 95% of these queries within 10 seconds (a percentage-based benchmark). (See App. B, Issue 5, and App. A at 13.)

3. Add Standards Where Previously not Established

For example, where Verizon previously had no standard, now it must complete 95% of its mechanized loop qualification queries within 60 seconds. (See App. B, Issue 4, and App. A at 13.)

Where the ILECs previously measured performance for Enhanced Extended Links (EEL) only diagnostically (without standards), now performance for EELs service types has reporting standards. (See App. B, Issues 9A, 17A, 36, 40, 46, 51, 76, 84, 90, 94, 124, 134, 141, 149, and 165, and the corresponding edits in Appendix A.)

¹⁷ As documented in Issue 132, SBC originally proposed to eliminate reporting for NXX codes, but the parties ended up resolving this issue by agreeing to the new benchmark as documented in Appendix A, at 90 and 91.

4. Modify Standards for Upgraded Systems

CLEC procedures and customer service record (CSR) inquiry features outlined in the Local Service Order Guide version 3 (LSOG 3) were updated to version 5 (LSOG 5), with both versions made concurrently available. The benchmark standard for LSOG 3 required mechanized CSR queries to be completed in an average of 10 seconds or less. Upon implementing new LSOG 5 procedures and features, LSOG 3 standards were modified to 90% of queries (now termed Customer Service Inquiries, or CSIs) completed within 8 seconds, 95% within 13 seconds, and for LSOG 5, 95% in 15 seconds. (See App. B, Issue 5, and App. A at 13.)

5. Aggregate or Disaggregate Sub-Measures

For SBC in PM 2, the parties agreed to combine performance measurement for several resale service types that were measured separately: Centrex, Private Branch Exchange (PBX), Digital Data Service (DDS), Digital Service Level 1 (DS1)/Integrated Services Digital Network (ISDN), Primary Rate Interface (PRI), Digital Service Level 3 (DS3), and Voice Grade Private Line (VGPL)/DS0. These service types will be combined into one measure, “Resale Specials.” (See App. A at 16.)

In contrast, for PM 9A the parties agreed to add DSL as a separate (disaggregated) sub-measure for SBC’s coordinated customer conversion measurement. (See App. B, Issue 64, and App. A at 50.)

6. New Exclusions

An example of an exclusion is the “time to check for available facilities,” which is excluded from the measurement of the time it takes to provide a customer with a firm order commitment (FOC, in PM 2). In this

example, the parties agreed to add Centrex and PBX to the list of service types allowed these exclusions. (See App. B, Issue 11, and App. A at 18.)

In the amended version, “test transactions” and “delays caused for customer reasons” will be excluded from relevant PMs. (See App. B, Issue 213, and App. A at 18.)

7. New Diagnostic Measures

Some new sub-measures have been added to monitor performance without generating incentive payments in the performance incentives plan. One example of this is in PM 2 where requests for conversion of special access circuits to Unbundled Network Elements (UNEs) will be tracked diagnostically. (See App. B, Issue 13, and App. A at 19.)

8. Clarification of Business Rules, Calculations, or Descriptions

Rules for measurement are often defined in “business rules.” For example, for PM 1, the measurement of response timeliness (manual CSIs) was changed from “clock hours” (24-hour clock), to “business hours” (8-hour clock). Consistent with this change, a business rule was changed to delete the reference to “clock hours.” (See App. B, Issue 7, and App. A at 13 – 14.)

Under another business rule, PM 2 measurement has included delays caused by erroneous ILEC rejection of Local Service Requests. Consequently, the business rules were amended to clarify how these calculations are made. (See App. B, Issue 14, and App. A at 19.)

Finally, PM 15 is designed to measure only provisioning troubles.¹⁸ In the current review, SBC initially proposed three changes to clarify PM 15's purpose: (1) changing the description to "Measures the percent of troubles that are reported (via customer or indirectly by CLEC) that occur as a result of the provisioning process," (2) adding the word "provisioning" to "trouble reports" in the calculation rules, and (3) adding a business rule stating that the measure "Includes only those trouble reports submitted as a result of the provisioning process." (See App. B, Issues 97, 98, and 106.) While the parties did not agree to all three changes, they agreed to make the change to the calculation rules as stated above, to add new order-tracking specifications, and to specify in greater detail the events that should not be included. (See App. A at 71 – 74.)

In its decision adopting the PIP, the Commission identified a problem with PM 16, where performance was calculated with mismatched time periods. While the measure was intended to capture the percentage of trouble reports within 30 days of completing a new order by dividing the number of trouble reports by the total number of new orders completed, the trouble report count originated in a different time-period than the time-period used for the total order count. Consequently, performance was not accurately reflected. (*Incentives Plan Opinion* at 73 – 75 and Ordering Paragraph 4.) In their January 31, 2003 motion, the parties agreed to base both metrics on the individual orders themselves, so that a precise performance result could be calculated. (See App. B, Issue 119, and App. A at 79.)

¹⁸ PM 19 measures other troubles - troubles that occur after the service has successfully been completed and used, or troubles unrelated to the installation work.

9. Clarifying or Informational Notes

Several notes were added to help the user better understand how performance is tracked and recorded. To facilitate the monitoring of excluded data, the parties added:

“Excluded data will be made available upon request through the raw data/excluded data process. (For SBC California, excluded data include CLEC/customer caused misses.)” (See App. B, Issue 15, and App. A at 20.)

In other cases, notes no longer useful or relevant were deleted. In PM 41 the following note was deleted:

“If time intervals for new or augmented collocation installations are adopted in any future Local Competition proceeding, these time intervals shall supercede the benchmarks set under this measure and shall be measured at 100% average response time. SBC California/GTE shall file by Advice Letter a compliance filing to incorporate any new requirements adopted in the Local Competition proceeding.” (App. B, Issue 203F, and App. A at 132.)

Since the parties agreed to new time intervals and standards, the parties also agreed to delete this note apparently realizing that the note becomes irrelevant upon our adoption of these changes. (See App. B, Issue 203F, and App. A at 132.)

10. New Measures

The parties agreed to four new performance measurements, PMs 8A, 11A, 18A, and 45. PM 8A is a provisioning measure titled, “Percent Completed within the Customer Requested Due Date” (SBC California only). (See App. A at 44 – 46.) PM 11A is another new provisioning measure, and is titled, “Loop Acceptance Testing (LAT) Not Completed on Time.” (See App. B, Issue 209, and App. A at 58.) PM 18A is a third new provisioning measure, and is titled, “Percent Mechanized Line Loss Notifications.” (See App. A at 88.) The fourth

new measure, PM 45, tracks the timeliness of change management notices, and is titled, “Timeliness of Change Management Notices.” (See App. A at 139 – 140.)

11. Title Changes for Changed PMs

For example, since PM 2 now includes benchmark standards where previously it only used average-based parity standards, its title was changed from “Average FOC/LSC Notice Interval”¹⁹ to the more general title, “FOC/LSC Notice Timeliness.” (See App. A at 8, 15.)

12. Change Retail Analog

For PM 22, the SBC retail analogs for CLEC UNE platform service (UNE-P) have changed from “Business POTS” to include both “Residential” and “Business POTS” depending on the type of CLEC customer. (See App. B, Issue 157A, and App. A at 101.) A similar change was made for PM 19 for SBC. (See App. A at 90.)

13. Delete Measure

Nine measures track billing accuracy and timeliness, PMs 28 through 36. The parties agreed to delete two of these measures, PMs 29 and 36. (See App. B, Issue 181, and App. A at 9, 115, and 125.)

D. Discussion

We have previously recognized California public policy favoring settlement. (*Re Pacific Bell*, D.92-07-076, 45 C.P.U.C. 2d 158, 169 (1992).) For the Commission to adopt a settlement, it must be “reasonable in light of the whole record, consistent with law, and in the public interest.” (*Re Application of GTE California Inc. for Review of the Operations of the Incentive-Based Regulatory*

¹⁹ “Average Firm Order Commitment/Local Service Center Notice Interval.”

Framework Adopted in Decision 89-10-031, D.96-05-037, slip op. (FOF 1) (May 8, 1996); Rule 51.1(e).) As discussed below, the appended JPSA satisfies these requirements.

Promoting competition in California's local exchange telephone market, as required by TA 96 and California Pub. Util. Code §§ 709.5 and 709.7, is a significant public policy goal of this Commission. To achieve our goal, competitors must have access to pre-ordering, ordering, provisioning, maintenance, networks, database updates, collocation, and interface information (the OSS sub-functions) from SBC and Verizon that is equal to the level of access in terms of quality, accuracy, and timeliness that SBC and Verizon provide themselves, their customers, and their affiliates. Without this nondiscriminatory access, competitors that need to use SBC and Verizon's network to provide local exchange service cannot provide their customers quality service.

The JPSA and the agreed-upon amendments resulting from the 2002 review provide an objective means to help assess whether an ILEC is providing its competitors with sufficient, non-discriminatory access to OSS as required by the Act. The Settling Parties include many of the carriers that are the most directly affected by the standards by which SBC's and Verizon's OSS are provisioned and who now have considerable experience with these measures, both as performance monitoring and performance motivating tools. With this decision's public interest goal being the measurement of competition-affecting performance, these competing parties are well positioned to protect and advance this goal insofar as OSS performance measurement affects such competition.

The JPSA updates the system we use to measure, evaluate, and motivate SBC and Verizon to meet their legal duties under TA 96 and the FCC rules implementing the 1996 Act. The FCC approved SBC's Section 271 application in

part relying on the fact that the CPUC performance incentives plan would be dynamic and responsive to experience and new conditions, stating,

“[T]he Commission will maintain vigilant oversight of the PIP. In its Plan Opinion, the California Commission ordered that after an initial period of six months, the performance of the PIP shall be reviewed by the California Commission and shall include any adjustments and modifications to the components, if necessary.”²⁰

The updated measurements and standards contained in the amended JPSA will enhance our oversight of ILEC OSS sub-functions, and are an example of our efforts to maintain “vigilant oversight” of our performance incentives plans.

We find that the amended JPSA will provide a comprehensive update to the OSS performance measurements and standards we have adopted in prior decisions. In reflecting the experience that industry participants have gained since our earlier proceeding, the amended JPSA builds on the substantial progress we have made in achieving our goal to provide competitors nondiscriminatory access to SBC’s and Verizon’s OSS. The current negotiations and the resulting settlement are consistent with the process and the record begun in 1997, and as such builds on those previous successes. We commend the parties for their hard work and for their willingness to seek mutually acceptable solutions.

The JPSA strikes a reasonable compromise among all parties’ interests. The Settling Parties are the companies providing or using OSS on a daily basis and therefore they have the greatest knowledge and the most current experience

²⁰ *Memorandum Opinion and Order in the Matter of Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02 - 306, dated December 19, 2002, at ¶ 163.

with their own OSS needs, problems, and capabilities. These parties have the expertise and technical knowledge and experience to make good judgments regarding these measures. While we adopt the revised JPSA based on our own independent analysis, we note that the JPSA represents a consensus among highly competitive parties that normally agree on very little. In this regard, we also find it important that the current settlement allowed parties to set aside disputed issues for follow-up advocacy in a separate Commission decision. This process minimizes the pressure on any party to “horse trade” one critical issue for another. Such pressured “trading” would be less likely to further the public interest.

Additionally, we find that it is in the public interest for the parties to make these consensual changes quickly for two reasons. First, expedited changes allow the performance incentives plan to adapt to experience and the dynamic nature of technology and the market. Second, it allows the parties to more quickly gain the experience that might be necessary to “fine tune” the measurements further. In that this Commission can amend the performance measurements upon motion by any party, there is little danger that the performance incentives plan will be left static with measurements that the parties may subsequently recognize need further adjustment. (See *1999 JPSA*, Attach. A at 66; *2000 JPSA*, Attach C at 112.)

The revised JPSA articulates in a detailed manner the very categories by which the Commission, the industry, and consumer advocates can measure, analyze, review, and motivate the ILEC performance necessary to provide nondiscriminatory access to OSS. For all of the above reasons, we conclude that the revised JPSA is reasonable in light of the whole record, consistent with law, and in the public interest.

E. Comments on Draft Decision

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

F. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Jacqueline A. Reed is the assigned ALJ in this proceeding.

Findings of Fact

1. To address local competition OSS issues in California, on October 9, 1997, we issued an order instituting a rulemaking proceeding and investigation (OSS OII).

2. In the course of the OSS OII, the parties negotiated a set of performance measures consistent with our stated goals, termed the Joint Partial Settlement Agreement (*1999 JPSA*).

3. We issued a decision approving the JPSA and resolving most of the remaining open issues on August 5, 1999. (D.99-08-020.)

4. In the original 1999 JPSA, the parties recognized that time and experience was likely to reveal needed improvements, and that periodic reviews should be performed.

5. The parties agreed to a periodic review commencing in February 2000.

6. The parties engaged in lengthy negotiations during the February 2000 review and submitted agreed-upon modifications to the Commission on July 18, 2000 ("*2000 JPSA*").

7. We adopted these modifications on May 24, 2001 in D.01-05-087.

8. The parties commenced the next periodic review after a June 20, 2002, written notification to all parties pursuant to Rule 51.1(b) of the Commission's Rules of Practice and Procedure that settlement discussions would be held for the purpose of discussing issues relating to OSS performance measurements.

9. SBC, Verizon, AT&T, WorldCom, Covad, XO, and TWTC (collectively, the Settling Parties) filed a joint motion asking the Commission to approve amendments to the JPSA.

10. SBC and Verizon filed implementation schedules for the JPSA amendments consistent with the negotiations.

11. The Settling Parties jointly state that the appended JPSA embodies the best efforts of the CLECs, SBC, and Verizon to agree on modifications to the performance measurements approved by the Commission in D.99-08-020 and subsequently in D.01-05-087.

12. The appended JPSA resolves most of the issues identified by the Settling Parties during the current 2002 review.

13. In settling a total of 196 identified issues and proposals, the parties agreed to several hundred individual amendments, which fall into 13 basic categories.

14. Promoting competition in California's local exchange telephone market is a significant public policy goal of this Commission.

15. Without nondiscriminatory access to OSS functions, competitors that need to use SBC and Verizon's network to provide local exchange service cannot provide their customers quality service.

16. The Settling Parties include many of the carriers that are the most directly affected by the standards by which SBC's and Verizon's OSS are provisioned and who now have considerable experience with these measures both as performance monitoring and performance motivating tools.

17. The competing parties in this proceeding are well positioned to protect and advance the measurement of competition-affecting performance.

18. The JPSA updates the system we use to measure, evaluate, and motivate SBC and Verizon to meet their legal duties under TA 96 and the FCC rules implementing the 1996 Act.

19. The amended JPSA will provide a comprehensive update to the OSS performance measurements and standards we have adopted in prior decisions.

20. The amended JPSA builds on the substantial progress we have made in achieving our goal to provide competitors nondiscriminatory access to SBC's and Verizon's OSS.

21. The JPSA negotiations and the resulting settlement are consistent with the process and the record begun in 1997.

22. The Settling Parties are the companies providing or using OSS on a daily basis.

23. The JPSA represents a consensus among highly competitive parties that normally agree on very little.

24. The revised JPSA articulates in a detailed manner the very categories by which the Commission, the industry, and consumer advocates can measure, analyze, review, and motivate the ILEC performance necessary to provide nondiscriminatory access to OSS.

Conclusions of Law

1. The Telecommunications Act of 1996 and the FCC's implementing rules require SBC and Verizon to provide competing CLECs with nondiscriminatory access to OSS.

2. ILECs must provide CLECs with access to the OSS sub-functions such that CLECs are able to perform these OSS functions in “substantially the same time and manner” as the ILECs can for themselves.

3. For those OSS sub-functions with retail analogs, an ILEC “must provide access to competing carriers that is equal to the level of access that the [ILEC] provides to itself, its customers or its affiliates, in terms of quality, accuracy and timeliness.”

4. For those OSS functions with no retail analog, an ILEC must offer access sufficient to allow an efficient competitor “a meaningful opportunity to compete.”

5. For the Commission to adopt a settlement, it must be “reasonable in light of the whole record, consistent with law, and in the public interest.”

6. The revised JPSA provides reasonable agreed-upon updates to the OSS performance measurements and standards we adopted in D.99-08-020, and amended in D.01-05-087, D.02-06-046, and D.02-08-050.

7. The FCC approved SBC’s Section 271 application in part relying on the fact that the CPUC performance incentives plan would be dynamic and responsive to experience and new conditions.

8. The updated measurements and standards contained in the amended JPSA will enhance our oversight of our performance incentives plans.

9. The amended JPSA strikes a reasonable compromise among all parties’ interests.

10. Because the Commission can amend the performance measurements upon motion by any party, there is little danger that the performance incentives plan will be left static with measurements that the parties may subsequently recognize need further adjustment.

11. The separately filed motion to resolve the issues remaining in dispute should be addressed in a later Commission decision.

12. The revised JPSA submitted by the Settling Parties is reasonable in light of the whole record, consistent with law, and in the public interest.

13. This decision should be effective today so that the performance measure revisions can be promptly implemented.

O R D E R

IT IS ORDERED that:

1. We adopt the revised Joint Partial Settlement Agreement (JPSA) as presented in Appendix A to this decision.
2. The revised JPSA herein may be implemented for the plan incentive credits due in September but shall be implemented no later than the time periods described in Appendices C and D to this decision.

This order is effective today.

Dated July 10, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners